

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CLAY E. RUSSELL,

Plaintiff,

v.

J. SANTOS and J. CRAINEY,

Defendants.

Case No. 18-CV-1759-JPS

ORDER

The Court ordered the U.S. Marshal to serve Defendants on November 20, 2018. (Docket #6). On January 28, 2019, Defendant J. Santos (“Santos”) entered his appearance in this case through counsel and answered Plaintiff’s complaint. (Docket #9, #10, and #11). Three days prior, Plaintiff had filed a two-part motion. (Docket #8). First, Plaintiff states that he has learned that the correct name of Defendant J. Crainey (“Crainey”) is actually Joseph Kroening. He asks that the Court “update the record.” *Id.* Second, Plaintiff requests that the Court enter default against Defendants because they have failed to answer his complaint. *Id.*

The Court will deny both requests. As to the first, it is Plaintiff who must “update the record” by filing an amended complaint naming the proper defendant(s). For Plaintiff’s benefit, the Court notes that an amended complaint supersedes the prior complaint and must be complete in itself without reference to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056–57 (7th Cir. 1998). In *Duda*, the Court of Appeals emphasized that in such instances, the “prior pleading is in effect withdrawn as to all matters not restated in the amended pleading[.]” *Id.* at 1057 (citation omitted). As to the second request, neither

defendant is in default. Santos has answered the complaint, and there is no evidence that the U.S. Marshal has served "Crainey." This makes sense, of course, because "Crainey" is not the defendant's correct name. If Plaintiff files an amended complaint stating the correct name for Kroening, the Court will order service upon him. The Court will further require Plaintiff to file an amended complaint within **twenty-one (21) days**. If he does not, this action will proceed against Santos alone.

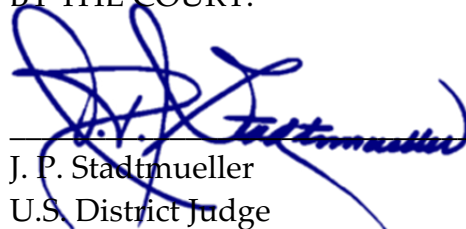
Accordingly,

IT IS ORDERED that Plaintiff's motion for default and to amend (Docket #8) be and the same is hereby **DENIED**; and

IT IS FURTHER ORDERED that Plaintiff must file an amended complaint in accordance with the terms of this Order within **twenty-one (21) days**.

Dated at Milwaukee, Wisconsin, this 6th day of February, 2019.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge